

IN THE COURT OF APPEAL OF TANZANIA  
AT MBEYA

CORAM: MUSTAFA, AG. C.J.; MAKAME, J.A. AND OMAR, J.A.

CRIMINAL APPEAL NO. 99 OF 1986

MKUCHI MWEZIMPYA ..... APPELLANT

And

THE REPUBLIC .....RESPONDENT

(Appeal from the conviction and sentence  
of The High Court of Tanzania at Iringa)  
(J.A. Mrosso, J) dated 13th November,  
1986

in

Criminal Sessions Case No. 18 of 1983

JUDGEMENT OF THE COURT

MUSTAFA, AG. C.J.

The appellant was alleged to have been hired to kill the deceased and that he did so for a sum of Shs.500/=. The appellant and two others were arrested and charged but the other two accused persons died while in custody before trial, leaving the appellant to be tried on his own. The appellant was convicted and sentenced to death.

The appellant was arrested about 4 months after the deceased had been killed. When the appellant was arrested by PW3, a detective sergeant, the appellant admitted to PW3 that he had killed the deceased after having been hired to do so for a sum of Shs.500/=. The appellant had spent Shs.200/=: and he handed over the balance of the fee, i.e. Shs.300/= to PW3.

The appellant later made an extra judicial statement to a Justice of the Peace PW4 in which he confessed to the killing of the deceased for a fee paid to him by <sup>his</sup> co-accused who had died.

At the trial the appellant confirmed what he had told PW3, the Police Officer and the Justice of the Peace PW4.

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The appellant at no stage denied the offence, but consistently stated that he was hired for a fee to kill and that he struck the deceased until he killed the deceased. The deceased, according to the post-mortem report died of head wounds; there was a cut in the right pinnae, a fracture of the mandibular bone and maxillary bone and right temporal bone.

At the trial, Mr. Mwakingwe appeared for the appellant; he also appeared before us for the appellant. He suggested at the trial that the appellant might have been suffering from a disease of the mind amounting to insanity. The appellant was duly sent to a Psychiatrist specialist for observation and examination, and in due course a report on the appellant was prepared and furnished to the Court and to the parties concerned.

It appeared that the appellant could not take advantage of such medical report, as it was obviously not supportive of the appellant's allegation of insanity.

Mr. Mwakingwe suggested that the fact that the appellant had killed in the circumstances alleged was indicative of insanity. There was no history of insanity, nor were any incidents suggesting such a possibility adduced in evidence.

We do not think that the appellant had adduced any evidence to establish that he was more likely insane than sane, and like the trial court we do not think that the appellant was insane when he killed.

The appeal is dismissed.

DATED at MBEYA this 5th day of May, 1987.


A MUSTAFA  
AG. CHIEF JUSTICE

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L.M. MAKAME  
JUSTICE OF APPEAL

A.M.A. OMAR  
JUSTICE OF APPEAL

I certify that this is a true copy of the original.

  
(J.H. Nsoffe)  
DEPUTY REGISTRAR

